

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

CAROL S. ROEDDER,	)	No. ED97105
Personal Representative of the Estate of	)	
EUGENE D. ROEDDER, Appellant,	)	
	)	Appeal from the Circuit Court of
vs.	)	St. Louis County
	)	
CHERYL A. CALLIS and KORTENHOF &	)	Honorable Mark D. Seigel
ELY, PC, Respondents.	)	Filed: June 5, 2012

Carol S. Roedder (Plaintiff), the personal representative of the estate of Eugene Roedder, appeals from the judgment of the Circuit Court of St. Louis County granting Cheryl Callis and Korten Hof & Ely, P.C.'s (Defendants) motion to dismiss for lack of legal capacity to bring suit. Plaintiff contends that the trial court erred in dismissing Mr. Roedder's claims of legal malpractice, breach of fiduciary duty, and punitive damages because these claims survived Mr. Roedder's death.

REVERSED AND REMANDED.

Division Four Holds: In light of our Supreme Court's determination in Gray v. Wallace, 319 S.W.2d 582 (Mo. 1959), that the legislature intended a broad and comprehensive construction of the survival statutes, we conclude that legal malpractice actions survive the death of the injured party. In light of Klemme v. Best, 941 S.W.2d 493 (Mo. banc 1991), denominating breach of fiduciary duty as a fraud claim, and Breeden v. Heuser, 273 S.W.3d 1 (Mo.App.W.D. 2008), holding that fraud claims survive the death of the injured party, we conclude that breach of fiduciary duty actions survive the death of the injured party. Finally, because Mr. Roedder's causes of action for legal malpractice and breach of fiduciary duty survive, his request for punitive damages survives.

Opinion by: Patricia L. Cohen, P.J.  
Roy L. Richter, J., and Robert M. Clayton III, J., concur.

Attorney for Appellant: Laurence D. Mass

Attorney for Respondents: Kenneth C. Brostron

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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